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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,442	11/03/2006	Jan Wietze Huisman	294-249 PC/D/US	1878
23869 7590 02/03/2009 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				
EXAMINER				
FRANGE, SHARON M				
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3728				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/575,442

**Applicant(s)**

HUISMAN, JAN WIETZE

**Examiner**

SHARON M. PRANGE

**Art Unit**

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2 and 4-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, and 4-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The Amendment filed October 20, 2008 has been entered. Claims 1, 2, and 4-8 remain pending in this application. Claim 3 has been canceled. The previous objection to claim 8 is withdrawn in light of Applicant's amendment. The previous 35 USC 112 rejections of claims 1 and 6-8 are withdrawn in light of Applicant's amendments to claims 1 and 6-8.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, and 7 are finally rejected under 35 U.S.C. 102(b) as being anticipated by King (GB 1,511,138).

Regarding claim 1, King discloses a package with: a box-shaped outer package and an inner package (anchor sheet 22). The outer package is provided with an inner space formed by a bottom (1) and sidewalls (2, 3, 4, 5), and the inner package is borne on at least two bearing parts (corner flaps 13) of the outer package folded in the inner space such that the inner package extends substantially parallel to and at a distance from the bottom of the outer package (Fig. 1, 4). The inner package is provided with form cavities (apertures 23) in which products can be received (page 2, lines 35-37).

Regarding claim 4, King discloses that the outer package is folded from a blank which includes the bearing parts (page 2, line 6; Fig. 1).

Regarding claim 5, King discloses that the outer package and the inner package are manufactured from substantially natural products that are recyclable as paper (page 2, lines 6, 38-39).

Regarding claim 7, King discloses a blank that is provided with at least one bottom face (1) and four sidewall flaps (2, 3, 4, 5) connected to the bottom face via respective first folding lines (6-9). Two opposite sidewall flaps are connected at the side remote from the bottom face via second folding lines to fold-over flaps (panels 12). The fold-over flaps are provided on opposite sides, via third fold lines (15), with bearing flaps (corner flaps 13) forming bearing parts. The bearing flaps extend such that when the box is set up they are disposed at a right angle with the bottom face and an acute angle with the sidewall. From the bottom, the bearing flaps have a height which is smaller than the height of the sidewall flaps (Fig. 1, 3).

Claims 1, 4, 5, and 8 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Taub (US Patent No. 4,739,921).

Regarding claim 1, Taub discloses a package with: a box-shaped outer package (container body 22) and an inner package (tray 24). The outer package is provided with an inner space formed by a bottom (28) and sidewalls (32, 34), and the inner package is borne on at least two bearing parts (cleats 38) of the outer package folded in the inner space such that the inner package extends substantially parallel to and at a distance from the bottom of the outer package. The inner package is provided with a form cavity

(interior space of tray) in which products can be received (column 2, lines 64-66; column 3, lines 4-11, 22-25; Fig. 1, 2).

Regarding claim 4, Taub discloses that the outer package is formed from blank (70) which includes the bearing parts (Fig. 3-6).

Regarding claim 5, Taub discloses that the packages are manufactured from corrugated paperboard (column 1, lines 53-54).

Regarding claim 8, Taub further discloses that the inner package is laid over the inner space where an accessory can be laid and is borne by the bearing parts. The product cavity is open at a side remote from the inner space and can hold products stored in the package, and a cover is closed the inner package (Fig. 1,2).

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 2 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Taub (US Patent No. 4,739,921).

Regarding claim 2, Taub discloses a cover (26), and that the inner package will virtually about the cover when the outer package is closed (Fig. 1, 2).

Taub does not disclose that the height of the inner space twice as great as the height of the inner package.

Taub discloses the general conditions of the claimed invention except for the express disclosure of the height of the inner space being twice as great as the height of the inner package. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the height of the inner space twice as great as the height of the inner package, since the claimed values are merely an optimum or workable range. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claim 6 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Taub in view of Merrill et al. (US Patent No 5,459,258).

Taub discloses all elements of the claimed invention except for the inner package being manufactured from a material produced on the basis of starch.

Merrill et al, teaches a thermoplastic material produced on the basis of starch that can be formed into containers, or packages, which is biodegradable (column 2, lines 47-55; column 7, lines 25-29).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed the inner package of the Taub package of a material produced on the basis of starch, as taught by Merrill et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### ***Response to Arguments***

3. Applicant's amendments have overcome the objection and 112 rejections from the previous Office Action.

Applicant's arguments filed October 20, 2008 have been fully considered but they are not persuasive.

Applicant argues on pages 7-8 that King does not disclose form cavities. Inasmuch as Applicant has defined a cavity in claim 1, a cavity can be construed as a hole or aperture, based on dictionary definition (cavity. Dictionary.com. *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004.).

Applicant argues on page 8 that the third folding lines are at right angles to the first folding lines in Applicant's invention, but not in King. However, Fig. 1 of King illustrates that the third folding lines (15) are at right angles to the first folding lines (9). Further, claim 7 does not recite the limitation that the third folding lines are at right angles to the first folding lines.

Applicant's arguments with respect to claims 1-3, 5, 6, and 8 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHARON M. PRANGE whose telephone number is (571)270-5280. The examiner can normally be reached on M-F 7:30-5.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. M. P./  
Examiner, Art Unit 3728

/JILA M MOHANDESI/  
Primary Examiner, Art Unit 3728